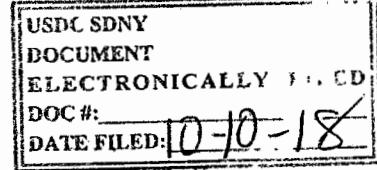


WILLKIE FARR & GALLAGHER LLP

DOCKET

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October 2, 2018



BY HAND

The Honorable Lewis A. Kaplan
United States District Court for the
Southern District of New York
Room 1940
500 Pearl Street
New York, NY 10007

Re: *United States v. James Gatto, et al. (Case No. S2 17-cr-00686 (LAK))*

Dear Judge Kaplan:

I write to express my deepest apologies to the Court and counsel for the Government for presenting PowerPoint slides to the jury during opening statements without having conferred in advance with Your Honor and with the Government about the use of such a presentation. I write to submit the affidavit requested by the Court and to explain, but in no way excuse, this serious error.

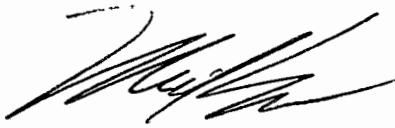
I anticipated that the Government would be using a PowerPoint presentation during its opening statement, as they did in the last criminal trial before Your Honor, *United States v. Blaszczak*, Case No. 17-cr-357 (LAK). In fact, the night before opening statements, I emailed the Government to inquire whether they intended to use Mr. Gatto's mugshot during their presentation, and offered an alternative photograph of Mr. Gatto for the Government's use. I assumed that the Government's decision not to request Mr. Gatto's PowerPoint slides in advance of trial was an intentional decision based upon a preference not to disclose its opening presentation to the defense prior to trial.

This was obviously a complete error on my part. I should have clarified with the Government whether they in fact intended to use a PowerPoint presentation during their opening statements, and I also should have conferred with Your Honor regarding my intention to use such a presentation.

Attached is the affidavit directed by the Court regarding what, if anything, the defense may have done which prevented the PowerPoint from being visible on the Court's monitor. As the affidavit reflects, the defense took no action causing this to occur and believe it was simply a technological glitch.

Again, the above explanation is simply to help the Court understand what transpired. It is not meant as an excuse. I apologize again to the Court and to the Government.

Respectfully submitted,



Michael S. Schachter

Enclosure

cc: (by email)

AUSA Edward Diskant

AUSA Noah Solowiejczyk

AUSA Aline Flodr

AUSA Eli Mark

Mark C. Moore

Merl F. Code

(Counsel for Defendant Merl Code)

Steven A. Haney

(Counsel for Defendant Christian Dawkins)

UNITED STATES OF AMERICA,

V.

JAMES GATTO,
a/k/a "Jim,"
MERL CODE, and
CHRISTIAN DAWKINS,

Defendants.

**AFFIDAVIT OF
RAYMOND MCLEOD**

Case No. 17-cr-00686 (LAK)

STATE OF NEW YORK)
COUNTY OF NEW YORK,) :ss.:

Raymond McLeod, being duly sworn, deposes and says:

1. I took no action to prevent the Court from viewing anything on the Court's display.
2. It is my understanding that no party can control what is, or is not, published on Your Honor's display.
3. I conferred with Your Honor's Courtroom Deputy, Andrew Mohan, and Mr. Mohan confirmed this understanding.

RAYMOND MCLEOD

Sworn to before me this
2nd day of October, 2018.

Ashley A. Moore
Notary Public

ASHLEY A. MOORE
Notary Public, State of New York
No. 01MO6172601
Qualified in New York County
Commission Expires Jan. 5, 2020